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NOTE: CHANGES MADE BY THE COURT

Attorneys for Defendants, CITY OF
AZUSA; OFFICER J. ARIAS,
individually; OFFICER J. BEAVER,
individually; OFFICER B.
HILDEBRANDT, individually

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RODERICK GARCIA,

Plaintiff,

v.

CITY OF AZUSA; OFFICER J.
ARIAS, individually; OFFICER J.
BEAVER, individually; OFFICER B.
HILDEBRANDT, individually; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 2:22-CV-03457-MWF-JPR

*[District Judge, Michael W. Fitzgerald;
Magistrate Judge, Jean P. Rosenbluth]*

[DISCOVERY MATTER]

**AMENDED STIPULATION FOR
ENTRY OF PROTECTIVE ORDER
RE CONFIDENTIAL DOCUMENTS**

Complaint Filed:
Trial Date:

05/20/22
Not Yet Set

TO THE HONORABLE COURT:

By and through their counsel of record in this action, plaintiff RODERICK GARCIA, (“plaintiff”); defendants CITY OF AZUSA (“City”), OFFICER J. ARIAS, OFFICER J. BEAVER and OFFICER B. HILDEBRANDT (collectively herein after as “Defendants”) – the parties – hereby stipulate for the purpose of jointly requesting that the honorable Court enter a protective order re confidential documents in this

1 matter [and pursuant to Fed. R. Civ. P. 5.2, 7, and 26, as well as U.S. Dist. Ct., C.D.
2 Cal., Local Rules 7-1 and 52-4.1; and any applicable Orders of the Court] – as follows:

3 **GOOD CAUSE STATEMENT**

4 **1. GOOD CAUSE STATEMENT.**

5 1.1. Contentions re Harm from Disclosure of Confidential Materials.

6 Defendants contend that there is good cause and a particularized need for a
7 protective order to preserve the interests of confidentiality and privacy in peace officer
8 personnel file records and associated investigative or confidential records for the
9 following reasons.

10 First, Defendants contend that peace officers have a federal privilege of privacy
11 in their personnel file records: a reasonable expectation of privacy therein that is
12 underscored, specified, and arguably heightened by the *Pitchess* protective procedure
13 of California law. *See Sanchez v. Santa Ana Police Dept.*, 936 F.2d 1027, 1033-1034
14 (9th Cir. 1990); *Hallon v. City of Stockton*, 2012 U.S. Dist. LEXIS 14665, *2-3, 12-
15 13 (E.D. Cal. 2012) (concluding that “while “[f]ederal law applies to privilege based
16 discovery disputes involving federal claims,” the “state privilege law which is
17 consistent with its federal equivalent significantly assists in applying [federal]
18 privilege law to discovery disputes”); *Soto v. City of Concord*, 162 F.R.D. 603, 613
19 n. 4, 616 (N.D. Cal. 1995) (peace officers have constitutionally-based “privacy rights
20 [that] are not inconsequential” in their police personnel records); *cf.* Cal. Penal Code
21 §§ 832.7, 832.8; Cal. Evid. Code §§ 1040-1047. Defendants further contend that
22 uncontrolled disclosure of such personnel file information can **threaten the safety of**
23 **non-party witnesses, officers, and their families/associates.**

24 Second, Defendants contend that municipalities and law enforcement agencies
25 have federal deliberative-executive process privilege, federal official information
26 privilege, federal law enforcement privilege, and federal attorney-client privilege
27 (and/or attorney work product protection) interests in the personnel files of their peace
28 officers – particularly as to those portions of peace officer personnel files that contain

critical self-analysis, internal deliberation/decision-making or evaluation/analysis, or communications for the purposes of obtaining or rendering legal advice or analysis – potentially including but not limited to evaluative/analytical portions of Internal Affairs type records or reports, evaluative/analytical portions of supervisory records or reports, and/or reports prepared at the direction of counsel, or for the purpose of obtaining or rendering legal advice. *See Sanchez*, 936 F.2d at 1033-1034; *Maricopa Audubon Soc’y v. United States Forest Serv.*, 108 F.3d 1089, 1092-1095 (9th Cir. 1997); *Soto*, 162 F.R.D. at 613, 613 n. 4; *Kelly v. City of San Jose*, 114 F.R.D. 654, 668-671 (N.D. Cal. 1987); *Tuite v. Henry*, 181 F.R.D. 175, 176-177 (D. D.C. 1998); *Hamstreet v. Duncan*, 2007 U.S. Dist. LEXIS 89702 (D. Or. 2007); *Admiral Ins. Co. v. United States Dist. Ct.*, 881 F.2d 1486, 1492, 1495 (9th Cir. 1988). Defendants further contend that such personnel file records are restricted from disclosure by the public entity’s custodian of records pursuant to applicable California law and that uncontrolled release is likely to result in needless intrusion of officer privacy; impairment in the collection of third-party witness information and statements and related legitimate law enforcement investigations/interests; and a chilling of open and honest discussion regarding and/or investigation into alleged misconduct that can erode a public entity’s ability to identify and/or implement any remedial measures that may be required.

Third, Defendants contend that, since peace officers do not have the same rights as other private citizens to avoid giving compelled statements, it is contrary to the fundamental principles of fairness to permit uncontrolled release of officers’ compelled statements. *See generally Lybarger v. City of Los Angeles*, 40 Cal.3d 822, 828-830 (1985); *cf. U.S. Const.*, amend V.

Accordingly, Defendants contend that, without a protective order preventing such, production of confidential records in the case can and will likely substantially impair and harm Defendants and public entity’s interests in candid self-critical analysis, frank internal deliberations, obtaining candid information from witnesses,

1 preserving the safety of witnesses, preserving the safety of peace officers and peace
2 officers' families and associates, protecting the privacy officers of peace officers, and
3 preventing pending investigations from being detrimentally undermined by
4 publication of private, sensitive, or confidential information – as can and often does
5 result in litigation.

6 1.2. Plaintiff does not agree with and does not stipulate to Defendants'
7 contentions herein above, and nothing in this Stipulation or its associated Order shall
8 resolve the parties' disagreement, or bind them, concerning the legal statements and
9 claimed privileges set forth above.

10 However, plaintiff agrees that there is Good Cause for a Protective Order so as
11 to preserve the respective interests of the parties without the need to further burden
12 the Court with such issues. Specifically, the parties jointly contend that, absent this
13 Stipulation and its associated Protective Order, the parties' respective privilege
14 interests may be impaired or harmed, and that this Stipulation and its associated
15 Protective Order may avoid such harm by permitting the parties to facilitate discovery
16 with reduced risk that privileged and/or sensitive/confidential information will
17 become matters of public record.

18 1.3. The parties jointly contend that there is typically a particularized need
19 for protection as to any medical or psychotherapeutic records, because of the privacy
20 interests at stake therein. Because of these sensitive interests, a Court Order should
21 address these documents rather than a private agreement between the parties.

22 1.4. The parties therefore stipulate that there is Good Cause for, and hereby
23 jointly request that the honorable Court issue/enter, a Protective Order re confidential
24 documents consistent with the terms and provisions of this Stipulation. However, the
25 entry of a Protective Order by the Court pursuant to this Stipulation shall not be
26 construed as any ruling by the Court on the aforementioned legal statements or
27 privilege claims in this section (§ 1), nor shall this section be construed as part of any
28 such Court Order.

A. PURPOSES AND LIMITATIONS.

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting or defending this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulation and an associated Order.

The parties acknowledge that this Stipulation and associated Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the specified information or items that are entitled to treatment as confidential.

The parties further acknowledge, as set forth below, that this Stipulation and Order creates no entitlement to file confidential information under seal. Central District Local Rules 79-5.1 and 79-5.2 set(s) forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

Nothing in this Stipulation or associated Order shall be construed so as to require or mandate that any Party disclose or produce privileged information or records that could be designated as Confidential Documents/Protected Material hereunder.

STIPULATION FOR PROTECTIVE ORDER RE CONFIDENTIAL RECORDS

2. DEFINITIONS.

2.1. Party: any party to this action, including all of its officers, directors, employees, agents, consultants, retained experts, house counsel and outside counsel (and/or the support staff thereof).

2.2. Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced – or generated in

disclosures or responses to discovery – by any Party in this matter.

2.3. “Confidential” Information or Items: information (regardless of the medium or how generated, stored, or maintained) or tangible things that qualify for protection under standards developed under Federal Rule of Civil Procedure 26(c) and/or applicable federal privileges. This material may include, but is not limited to, medical records, psychotherapeutic records, etc.; as well as peace officer personnel records as defined by California Penal Code sections 832.8, 832.5, 832.7 and the associated case law; and other similar confidential records designated as such.

2.4. Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party, including a Party that has noticed or subpoenaed and is taking a deposition or comparable testimony.

2.5. Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action, including a Party that is defending a deposition noticed or subpoenaed by another Party; additionally, for the limited purpose of designating testimony subject to this Stipulation and Order, a “Producing Party” shall also be construed to include a Party that is attending and/or participating in a non-party deposition noticed/subpoenaed by another Party.

2.6. Designating Party: a Party or non-party public entity employer of a Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.7. Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL” under the provisions of this Stipulation and Protective Order. (The term “Confidential Document” shall be synonymous with the term “Protected Material” for the purposes of this Stipulation and any associated Protective Order.)

2.8. Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action (as well as their support staffs).

2.9. House Counsel: attorneys who are employees of a Party (as well as their

1 support staffs).

2 2.10. Counsel (without qualifier): Outside Counsel and House Counsel (as
3 well as their support staffs).

4 2.11. Expert: a person with specialized knowledge or experience in a matter
5 pertinent to the litigation who has been retained by a Party or its counsel to serve as
6 an expert witness or as a consultant in this action and who is not a past or a current
7 employee of a Party and who, at the time of retention, is not anticipated to become an
8 employee of a Party or a competitor of a Party's; as well as any person retained,
9 designated, or disclosed by a Party as an expert pursuant to Federal Rule of Civil
10 Procedure 26(a)(2) or other applicable discovery Rules or statutes.

11 2.12. Professional Vendors: persons or entities that provide litigation support
12 services (e.g., photocopying; videotaping; translating; preparing exhibits or
13 demonstrations; and/or organizing, storing, retrieving data in any form or medium;
14 etc.); and their employees and subcontractors.

15 **3. SCOPE OF PROTECTION.**

16 The protections conferred by this Stipulation and its associated Order cover not
17 only Protected Material/Confidential Documents (as defined above), but also (1) any
18 information copied or extracted from Protected Material; (2) all copies, excerpts,
19 summaries, or compilations of Protected Material; and (3) any testimony,
20 conversations, or presentations by Parties or their Counsel that might reveal Protected
21 Material. However, the protections conferred by this Stipulation and its associated
22 Order do *not* cover the following information: (a) any information that is in the public
23 domain at the time of disclosure to a Receiving Party or becomes part of the public
24 domain after its disclosure to a Receiving Party as a result of publication not involving
25 a violation of this Order, including becoming part of the public record through trial or
26 otherwise; and (b) any information known to the Receiving Party prior to the
27 disclosure or obtained by the Receiving Party after the disclosure from a source who
28 obtained the information lawfully and under no obligation of confidentiality to the

Designating Party.

Except to the extent specified herein (if any), any use of Protected Material at trial shall not be governed by this Order, but may be governed by a separate agreement or order.

Any use of Protected Material at trial shall be governed by the Orders of the trial judge: this Stipulation and its associated Protective Order do(es) not govern the use of Protected Material at trial.

Nothing in this Stipulation or its associated Order shall be construed as binding upon the Court or its court personnel, who are subject only to the Court's internal procedures regarding the handling of materials filed or lodged, including materials filed or lodged under seal.

4. DURATION OF PROTECTION.

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATION OF PROTECTED MATERIAL/CONFIDENTIAL DOCUMENTS.

5.1. Exercise of Restraint and Care in Designating Material for Protection.

Each Party or non-party that designates information or items for protection under this Stipulation and its associated Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that

1 other portions of the material, documents, items or communications for which
 2 protection is not warranted are not swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routine designations are prohibited. Designations that
 4 are shown to be clearly unjustified, or that have been made for an improper purpose
 5 (e.g., to unnecessarily encumber or retard the case development process, or to impose
 6 unnecessary expenses and burdens on other parties), expose the Designating Party to
 7 sanctions.

8 If it comes to a Party's or a non-party's attention that information or items that
 9 it designated for protection do not qualify for protection at all, or do not qualify for
 10 the level of protection initially asserted, that Party or non-party must promptly notify
 11 all other parties that it is withdrawing the mistaken designation.

12 5.2. Manner and Timing of Designations. Except as otherwise provided in
 13 this Order, or as otherwise stipulated or ordered, material that qualifies for protection
 14 under this Order must be clearly so designated before the material is disclosed or
 15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (apart from transcripts of
 18 depositions or other pretrial or trial proceedings, and regardless of whether produced
 19 in hardcopy or electronic form), that the Producing Party affix the legend
 20 "CONFIDENTIAL" to each page that contains Protected Material. If only a portion
 21 or portions of the material on a page qualifies for protection, the Producing Party also
 22 must clearly identify the protected portion(s) (e.g., by making appropriate markings
 23 in the margins) and must specify, for each portion that it is "CONFIDENTIAL." The
 24 placement of such "CONFIDENTIAL" stamp on such page(s) shall not obstruct the
 25 substance of the page's (or pages') text or content.

26 A Party or Non-Party that makes original documents or materials available for
 27 inspection need not designate them for protection until after the inspecting Party has
 28 indicated which material it would like copied and produced. During the inspection

1 and before the designation, all of the material made available for inspection shall be
 2 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
 3 it wants copied and produced, the Producing Party must determine which documents,
 4 or portions thereof, qualify for protection under this Order. Then, before producing
 5 the specified documents, the Producing Party must affix the “CONFIDENTIAL”
 6 legend to each page that contains Protected Material. If only a portion or portions of
 7 the material on a page qualifies for protection, the Producing Party also must clearly
 8 identify the protected portion(s) (e.g., by making appropriate markings in the
 9 margins).

10 (b) for testimony given in deposition or in other discovery related
 11 proceedings, that the Party or non-party offering or sponsoring the testimony identify
 12 on the record, before the close of the deposition, hearing, or other proceeding, all
 13 protected testimony, and further specify any portions of the testimony that qualify as
 14 “CONFIDENTIAL.” When it is impractical to identify separately each portion of
 15 testimony that is entitled to protection, and when it appears that substantial portions
 16 of the testimony may qualify for protection, the Producing Party may invoke on the
 17 record (before the deposition or proceeding is concluded) a right to have up to twenty
 18 (20) days to identify the specific portions of the testimony as “CONFIDENTIAL.”
 19 Only those portions of the testimony that are appropriately designated as
 20 “CONFIDENTIAL” for protection within the 20 days shall be covered by the
 21 provisions of this Stipulation and its associated Protective Order.

22 The court reporter must affix to each such transcript page containing Protected
 23 Material the legend “CONFIDENTIAL,” as instructed by the Producing Party.

24 (c) for information produced in some form other than documentary, and for
 25 any other tangible items (including but not limited to information produced on disc or
 26 electronic data storage device), that the Producing Party affix in a prominent place on
 27 the exterior of the container or containers in which the information or item is stored
 28 the legend “CONFIDENTIAL.” If only portions of the information or item warrant

1 protection, the Producing Party, to the extent practicable, shall identify the protected
 2 portions, specifying the material as “CONFIDENTIAL.”

3 5.3. Inadvertent Failures to Designate. If timely corrected (preferably,
 4 though not necessarily, within 30 days of production or disclosure of such material),
 5 an inadvertent failure to designate qualified information or items as
 6 “CONFIDENTIAL” does not, standing alone, waive the Designating Party’s right to
 7 secure protection under this Stipulation and its associated Order for such material.

8 If material is appropriately designated as “CONFIDENTIAL” *after* the material
 9 was initially produced, the Receiving Party, on timely notification of the designation,
 10 must make reasonable efforts to assure that the material is treated in accordance with
 11 this Stipulation and its associated Order.

12 5.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party shall
 13 not alter, edit, or modify any Protected Material so as to conceal, obscure, or remove
 14 a “CONFIDENTIAL” stamp or legend thereon; nor shall a Receiving Party take any
 15 other action so as to make it appear that Protected Material is not subject to the terms
 16 and provisions of this Stipulation and its associated Order. However, nothing in this
 17 section shall be construed so as to prevent a Receiving Party from challenging a
 18 confidentiality designation subject to the provisions of section 6, *infra*.

19 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

20 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
 21 designation of confidentiality at any time that is consistent with the Court's
 22 Scheduling Order. Unless a prompt challenge to a Designating Party’s confidentiality
 23 designation is necessary to avoid foreseeable substantial unfairness, unnecessary
 24 economic burdens, or a later significant disruption or delay of the litigation, a Party
 25 does not waive its right to challenge a confidentiality designation by electing not to
 26 mount a challenge promptly after the original designation is disclosed.

27 6.2. Meet and Confer. Prior to challenging a confidentiality designation, a
 28 Challenging Party shall initiate a dispute resolution process by providing written

notice of each specific designation it is challenging, and describing the basis (and supporting authority or argument) for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the associated Protective Order, as well as Local Rule 37. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue, either in person, telephonically, or by other comparable means, but *not* by correspondence) in compliance with Local Rule 37.

In conferring, the Challenging Party must explain the specific basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

Frivolous challenges, and those challenges made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties), may expose the Challenging Party to sanctions.

6.3. Judicial Intervention. If the Parties cannot resolve a confidentiality challenge without court intervention, the Challenging Party shall file and serve a motion to remove confidentiality (under the applicable rules for filing and service of discovery motions) in compliance with Local Rule 37 and the Court's order regarding timing of discovery motions.

The parties must strictly comply with Central District Local Rules 37-1 and 37-2 (including the joint stipulation re discovery dispute requirement) in any motion associated with this Protective Order.

Each such motion must be accompanied by a competent declaration affirming

1 that the movant has complied with the meet and confer requirements imposed in the
 2 preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the
 4 Designating Party, regardless of whether the Designating Party is the moving party or
 5 whether such Party sought or opposes judicial intervention. Frivolous challenges, and
 6 those made for an improper purpose (e.g., to harass or impose unnecessary expenses
 7 and burdens on other parties) may expose the Challenging Party to sanctions. Unless
 8 the Designating Party has waived the confidentiality designation by failing to oppose
 9 a motion to remove confidentiality as described above, all parties shall continue to
 10 afford the material in question the level of protection to which it is entitled under the
 11 Producing Party's designation until the court rules on the challenge.

12 6.4. Withdrawal of "CONFIDENTIAL" Designation. At its discretion, a
 13 Designating Party may remove Protected Material/Confidential Documents from
 14 some or all of the protections and provisions of this Stipulation and its associated
 15 Order at any time by any of the following methods:

16 (a) Express Written Withdrawal. A Designating Party may withdraw a
 17 "CONFIDENTIAL" designation made to any specified Protected Material
 18 /Confidential Documents from some or all of the protections of this Stipulation and
 19 its associated Order by an express withdrawal in a writing signed by such Party (or
 20 such Party's Counsel, but not including staff of such Counsel) that specifies and
 21 itemizes the Disclosure or Discovery Material previously designated as Protected
 22 Material/Confidential Documents that shall no longer be subject to all or some of the
 23 provisions of this Stipulation and Order. Such express withdrawal shall be effective
 24 when transmitted or served upon the Receiving Party. If a Designating Party is
 25 withdrawing Protected Material from only some of the provisions/ protections of this
 26 Stipulation and Order, such Party must state which specific provisions are no longer
 27 to be enforced as to the specified material for which confidentiality protection
 28 hereunder is withdrawn: otherwise, such withdrawal shall be construed as a

1 withdrawal of such material from all of the protections/provisions of this Stipulation
 2 and Order;

3 (b) Express Withdrawal on the Record. A Designating Party may withdraw
 4 a “CONFIDENTIAL” designation made to any specified Protected
 5 Material/Confidential Documents from all of the provisions/protections of this
 6 Stipulation and its associated Order by verbally consenting in court proceedings on
 7 the record to such withdrawal – provided that such withdrawal specifies the
 8 Disclosure or Discovery Material previously designated as Protected Material/
 9 Confidential Documents that shall no longer be subject to any of the provisions of this
 10 Stipulation and Order. A Designating Party is not permitted to withdraw Protected
 11 Material from only some of the protections/provisions of this Stipulation and Order
 12 by this method;

13 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A
 14 Designating Party shall be construed to have withdrawn a “CONFIDENTIAL”
 15 designation made to any specified Protected Material/Confidential Documents from
 16 all of the provisions/protections of this Stipulation and Order by either (1) making
 17 such Protected Material/Confidential Records part of the public record – including
 18 but not limited to attaching such as exhibits to any filing with the court without
 19 moving, prior to such filing, for the court to seal such records; or (2) failing to timely
 20 oppose a Challenging Party’s motion to remove a “CONFIDENTIAL” designation to
 21 specified Protected Material/Confidential Documents.

22 **7. ACCESS TO AND USE OF PROTECTED MATERIAL.**

23 7.1. Basic Principles. A Receiving Party may use Protected Material that is
 24 disclosed or produced by another Party or by a non-party in connection with this case
 25 only for preparing, prosecuting, defending, or attempting to settle this litigation – up
 26 to and including final disposition of the above-entitled action – and not for any other
 27 purpose, including any other litigation or dispute outside the scope of this action.
 28 Such Protected Material may be disclosed only to the categories of persons and under

the conditions described in this Stipulation and its associated Order. When the above entitled litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Stipulation and its Order.

7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

(a) the Receiving Party’s Outside Counsel of record in this action, as well as employees of such Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation – each of whom, by accepting receipt of such Protected Material, thereby agree to be bound by this Stipulation and Order;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses and attorneys for witnesses to whom

disclosure is reasonably necessary, provided that the deposing party requests that the witness sign the form attached as Exhibit A hereto and the witnesses will not be permitted to keep any confidential information unless they sign the form, unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order;

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed on by any of the Parties engaged in settlement discussions or appointed by the Court; and

(j) the author or custodian of a document containing the information that constitutes Protected Material, or other person who otherwise possessed or knew the information.

7.3. Notice of Confidentiality. Prior to producing or disclosing Protected Material/Confidential Documents to persons to whom this Stipulation and its Order permits disclosure or production, a Receiving Party shall provide a copy of this Stipulation and Order to such persons so as to put such persons on notice as to the restrictions imposed upon them herein: except that, for court reporters, Professional Vendors, and for witnesses being provided with Protected Material during a deposition, it shall be sufficient notice for Counsel for the Receiving Party to give the witness a verbal admonition (on the record, for witnesses) regarding the provisions of this Stipulation and its Order and such provisions' applicability to specified Protected Material at issue.

7.4. Reservation of Rights. Nothing in this Stipulation and Order shall be construed so as to require any Producing Party to designate any records or materials as "CONFIDENTIAL." Nothing in this Stipulation and Order shall be construed so as to prevent the admission of Protected Material into evidence at the trial of this action, or in any appellate proceedings for this action, solely on the basis that such

Disclosure or Discovery Material has been designated as Protected Material/Confidential Documents. Notwithstanding the foregoing, nothing in this Stipulation and Order shall be construed as a waiver of any privileges or of any rights to object to the use or admission into evidence of any Protected Material in any proceeding; nor shall anything herein be construed as a concession that any privileges asserted or objections made are valid or applicable. Nothing in this Stipulation and Order shall be construed so as to prevent the Designating Party (or its Counsel or custodian of records) from having access to and using Protected Material designated by that Party in the manner in which such persons or entities would typically use such materials in the normal course of their duties or profession – except that the waiver of confidentiality provisions shall apply (see section 6.4(c), *supra*).

7.5. Requirement to File Confidential Documents Under Seal. Confidential Documents may be submitted in all law and motion proceedings before the Court if done so under seal pursuant to Federal Rules of Civil Procedure 5.2 and 26 and/or United States District Court, Central District of California Local Rules 79-5.1 and 79-5.2 (as applicable) and pursuant to the provisions of this Stipulation and any associated Order.

(This paragraph (§ 7.5) shall not be construed so as to prevent a Designating Party or counsel from submitting, filing, lodging, or publishing any document it has previously designated as a Confidential Document without compliance with this paragraph's requirement to do so under seal (i.e., a producing-disclosing party or counsel may submit or publish its own Confidential Documents without being in violation of the terms of this Stipulation and its Protective Order).

Furthermore, a Receiving Party shall be exempted from the requirements of this paragraph as to any specifically identified Confidential Document(s) where – prior to the submission or publication of the Confidential Document(s) at issue – the Designating Party of such specifically identified Confidential Document(s) has waived/withdrawn the protections of this Stipulation and its Order (pursuant to

1 paragraph 6.4, *supra*).

2 Nothing in this paragraph shall be construed to bind the Court or its authorized
 3 staff so as to limit or prevent the publication of any Confidential Documents to the
 4 jury or factfinder, at the time of trial of this matter, where the Court has deemed such
 5 Confidential Documents to be admissible into evidence.

6 Nothing in this Stipulation or in any associated Order shall be construed as any
 7 entitlement for the parties to file any documents or materials under seal; nor shall the
 8 parties' Stipulation or this Order be construed as any exemption from any of the
 9 requirements of Central District Local Rule 79-5. The parties are required to comply
 10 with the applicable Local Rules in their entirety. If the Court denies a party's request
 11 for filing material under seal, that material may be filed in the public record unless
 12 otherwise instructed by the Court.

13 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 14 **PRODUCED IN OTHER LITIGATION.**

15 If a Party is served with a subpoena or a court order issued in other litigation
 16 that compels disclosure of any information or items designated in this action as
 17 "CONFIDENTIAL," that Party must:

18 (a) promptly notify in writing the Designating Party, preferably (though not
 19 necessarily) by facsimile or electronic mail. Such notification shall include a copy of
 20 the subpoena or court order at issue, unless prohibited by law;

21 (b) promptly notify in writing the party who caused the subpoena or order to
 22 issue in the other litigation that some or all of the material covered by the subpoena
 23 or order is subject to this Stipulation and its Protective Order. Such notification shall
 24 include a copy of this Stipulation and its Protective Order; and

25 (c) cooperate with respect to all reasonable procedures sought to be pursued
 26 by all sides in any such situation, while adhering to the terms of this Stipulation and
 27 its Order.

28 If the Designating Party timely seeks a protective order, the Party served with

the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the relevant court, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

The purpose of this section is to ensure that the affected Party has a meaningful opportunity to preserve its confidentiality interests.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

9.1. Unauthorized Disclosure of Protected Material.

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulation and Order, the Receiving Party must immediately:

- (a) notify in writing the Designating Party of the unauthorized disclosures;
- (b) use its best efforts to retrieve all copies of the Protected Material;
- (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and
- (d) request such person or persons consent to be bound by the Stipulation and Order.

9.2. Inadvertent Production of Privileged or Otherwise Protected Material.

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the

parties may incorporate their agreement in the stipulated protective order submitted to the court, provided the court so allows.

10. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.

10.1. Filing of Protected Material.

Without advance written permission from the Designating Party, or a court order secured after appropriate notice to all interested persons, a Receiving Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with the applicable Federal and Local Rules.

10.2. Public Dissemination of Protected Material.

A Receiving Party shall not publish, release, post, or disseminate Protected Material to any persons except those specifically delineated and authorized by this Stipulation and its Order (see section 7, *supra*); nor shall a Receiving Party publish, release, leak, post, or disseminate Protected Material/Confidential Documents to any news media, member of the press, website, or public forum.

11. FINAL DISPOSITION.

Unless otherwise ordered or agreed in writing by the Producing Party, within thirty (30) days after the final termination of this action (defined as the dismissal or entry of judgment by the above named court, or if an appeal is filed, the disposition of the appeal), upon written request by the Producing Party, each Receiving Party must return all Protected Material to the Producing Party – whether retained by the Receiving Party or its Counsel, Experts, Professional Vendors, agents, or any non-party to whom the Receiving Party produced or shared such records or information.

As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material, regardless of the medium (hardcopy, electronic, or otherwise) in which such Protected Material is stored or retained.

In the alternative, at the discretion of the Receiving Party, the Receiving Party

1 may destroy some or all of the Protected Material instead of returning it – unless such
 2 Protected Material is an original, in which case, the Receiving Party must obtain the
 3 Producing Party’s written consent before destroying such original Protected Material.

4 Whether the Protected Material is returned or destroyed, the Receiving Party
 5 must submit a written certification to the Producing Party (and, if not the same person
 6 or entity, to the Designating Party) within thirty (30) days of the aforementioned
 7 written request by the Designating Party that specifically identifies (by category,
 8 where appropriate) all the Protected Material that was returned or destroyed and that
 9 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
 10 summaries or other forms of reproducing or capturing any of the Protected material
 11 (in any medium, including but not limited to any hardcopy, electronic or digital copy,
 12 or otherwise).

13 Notwithstanding this provision, Counsel are entitled to retain an archival copy
 14 of all pleadings, motion papers, transcripts, legal memoranda filed with the court in
 15 this action, as well as any correspondence or attorney work product prepared by
 16 Counsel for the Receiving Party, even if such materials contain Protected Material;
 17 however, any such archival copies that contain or constitute Protected Material remain
 18 subject to this Protective Order as set forth in Section 4 (DURATION), above. This
 19 court shall retain jurisdiction in the event that a Designating Party elects to seek court
 20 sanctions for violation of this Stipulation and its Order.

21 **12. MISCELLANEOUS.**

22 12.1. Right to Further Relief. Nothing in this Stipulation and its Order
 23 abridges the right of any person to seek its modification by the Court in the future.

24 12.2. Right to Assert Other Objections. By stipulating to the entry of a
 25 Protective Order pursuant to this Stipulation, no Party waives any right it otherwise
 26 would have to object to disclosing or producing any information or item on any
 27 ground not addressed in this Stipulation and its Order. Similarly, no Party waives any
 28 right to object on any ground to use in evidence any of the material covered by this

1 Stipulation and its Protective Order.

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1 12.3. This Stipulation may be signed in counterpart and a facsimile or
2 electronic signature shall be as valid as an original signature.

3 **IT IS SO STIPULATED.**

4
5 DATED: September 20, 2022 **HERBERT & HAYDEN**

6
7 By: /s/ Herbert Hayden

8 John W. Harris
9 Herbert Hayden
10 Attorneys for Plaintiff,
11 RODERICK GARCIA

12 DATED: September 20, 2022 **MANNING & KASS**
13 **ELLROD, RAMIREZ, TRESTER LLP**

14
15 By: /s/ Garros Chan

16 Mildred K. O'Linn
17 Garros Chan
18 Attorneys for Defendants, CITY OF
19 AZUSA; OFFICER J. ARIAS,
20 individually; OFFICER J. BEAVER,
21 individually; OFFICER B.
22 HILDEBRANDT, individually

23 **IT IS SO ORDERED.**

24 Dated: September 21, 2022

25 

26 JEAN P. ROSENBLUTH
27 UNITED STATES MAGISTRATE JUDGE
28

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____
 [full address], declare under penalty of perjury that I have read in its entirety and
 understand the Stipulated Protective Order that was issued by the U.S. District Court
 for the Central District of California on [date] in the case of _____ [insert
 case name and number]. I agree to comply with and to be bound by all terms of
 this Stipulated Protective Order, and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment, including contempt. I
 solemnly promise that I will not disclose in any manner any information or item that
 is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the
 Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [full
 name] of _____ [full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____